

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Hyla P. Wagner, Senior Commission Counsel, Legal Division
Scott Hallabrin, General Counsel

Subject: Adoption of Regulation 18466 – State Ballot Measure Contributions and Expenditures; Online Reports

Date: August 1, 2007

Proposed Commission Action: Adopt Regulation 18466 (Attachment 1). The regulation has been modified from the April version responding to comments from Commissioners and the regulated community, as discussed in the Supplemental Memorandum (Attachment 2).

Public Notice: The draft regulation was distributed for public comment through the Office of Administrative Law notice procedure, emailed to the FPPC's interested persons, and posted on the "What's New" section on the FPPC's home page.

Reason for Proposal: Regulation 18466 interprets new Government Code Section 84204.5 (AB 1759 Umberg), which requires additional reporting of the sources of funding for ballot measures. The policy behind the legislation is to clearly show the public the sources of funding for ballot measures. It plugs a small disclosure gap, requiring a general purpose committee which, for example, gives \$40,000 to a state ballot measure committee, to report the \$40,000 contribution *and the sources of those funds - the underlying contributors to the donor committee, before the election*. The Senate Committee analysis cites the Small Business Action Committee's contributions to the union dues measure in the 2005 special election as an example of why the disclosure is needed. The supplemental memorandum discusses this example.

The Umberg reporting requirement applies only to *state committees* who are sophisticated political actors, not to individuals or corporate major donors. The reporting applies only to the committee *making* the contribution, not the committee receiving it. And the reporting applies only to committees that are active in state races – those who file online with the Secretary of State because they have raised or spent \$50,000 or more for state candidates or measures. Section 84204.5 is an *additional* ballot measure funding reporting requirement, but by no means the only one.

The operative language of Government Code Section 84204.5 (Attachment 3) provides:

“(a) In addition to any other report required by this title, a committee pursuant to subdivision (a) of Section 82013 that is required to file reports pursuant to Section 84605 [online reporting] shall file online or electronically with the Secretary of State each time it makes contributions totaling five thousand dollars (\$5,000) or more or each time it makes independent expenditures totaling five

thousand dollars (\$5,000) or more to support or oppose the qualification or passage of a single state ballot measure.”

Summary of Regulation: The regulation clarifies under what circumstances committees must file Section 84204.5 reports. It interprets what is meant by the statutory language requiring a committee to file a report “each time it makes contributions totaling \$5,000 dollars or more¹ . . . to support or oppose the qualification or passage of a single state ballot measure.”

Paragraphs (a)(1) and (3), address the easy cases, specifying that a committee must file an Umberg report when it makes contributions totaling \$5,000 or more to a committee primarily formed to support or oppose a single state ballot measure, or makes independent expenditures totaling \$5,000 to support or oppose a single state measure.

In response to comments at the April meeting, we have substantially narrowed the application of the reporting requirement for contributions to state general purpose committees. Paragraph (a)(2) states that the Government Code Section 84204.5 reporting applies when a donor committee makes contributions totaling \$5,000 or more to a state general purpose committee and either (A) the donor knows the contributions are to support or oppose a single state measure, or (B) the donor is making contributions to a general purpose committee that has reported contributions or expenditures exceeding \$100,000 in the past 12 months for a single state ballot measure in an upcoming election.

Paragraph (b) addresses contributions to committees that are supporting or opposing multiple state measures in the same election. Paragraph (b) states that a report is required when a committee makes contributions totaling \$5,000 or more to a committee supporting or opposing multiple state measures on the same ballot, unless before the 10-day deadline for filing the report under Section 84204.5, the donor has received written notice (which may be the solicitation) from the committee receiving the contribution stating how the money will be apportioned and demonstrating that \$5,000 or more will not be spent on a single state measure. Lastly, paragraph (c) of the regulation exempts a committee from duplicative reporting.

Additional Information: At the April meeting, the Commission requested additional briefing on this regulation including how the new reporting should apply to contributions for ballot measures made to a state general purpose committee, and the reporting threshold when a donor gives to a committee supporting several state measures. We received a letter from Rebecca Olson focusing on the same issues (Attachment 4, commenting on April version). The Supplemental Memorandum discusses these questions.

Recommendation: Staff recommends that the Commission adopt Regulation 18466.

Attachments: 1 - Proposed Regulation 18466
2 - Supplemental Memorandum
3 - Government Code Section 84204.5
4 - Letter of April 24, 2007 from Rebecca Olson commenting on April version

¹ We interpret the phrase “contributions totaling five thousand dollars (\$5,000) or more” to mean that the standard cumulation rules apply to these reports.